

**FREEDOM OF INFORMATION ACT APPEAL
HQ-APP-00092-06**

REQUESTER: Jamy Buchanan

Request Date: June 19, 2006

COMPANY: Buchanan & Associates

Received Date: June 27, 2006

FEE Category: Commercial

Subject: Record Appeal of FOIA 01-RIN-00229-05

Due Date: 7/26/2006

ASSIGNMENTS:

OGC

SPECIAL INSTRUCTIONS:

Copy sent to Region 1 via "Request for Documents".

IF COSTS ARE EXPECTED TO
EXCEED \$25.00, CONTACT
REQUESTER FOR PAYMENT
COMMITMENT BEFORE
PROCESSING REQUEST.

REC'D BY / DATE

FS: VW

BUCHANAN & ASSOCIATES
33 MOUNT VERNON STREET
BOSTON, MA 02108

JAMY BUCHANAN MADEJA, ESQ.
JMADEJA@BUCHANANASSOCIATES.COM

TELEPHONE: (617) 227-8410
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June 19, 2006

U.S. Environmental Protection Agency
Freedom of Information Officer (2822T)
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Request No. 01-RIN-00229-05; Determination made by Carl Dierker, Esq.,
Regional Counsel, US EPA Region 1, One Congress St. Suite 1100, Boston, MA
02114 in May 24, 2006 EPA Region 1 letter exempting documents from
disclosure

Dear Freedom of Information Officer:

Please consider this a formal appeal of the above-referenced determination denying my client access to certain specified public records (copy of determination attached).

As brief background, my clients, James M. Knott, Sr. and Riverdale Mills, were subject to an intense EPA criminal investigation after which the government withdrew all charges (see details in original FOIA request attached).

The grounds for appealing the withholding of records exemptions from disclosure are stated below. The EPA has claimed only one exemption category under 5 U.S.C. 552(b)(5): ("inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency") but four types of sub-exemptions:

1. Attorney-Client Privilege (369 pages): The litigation concerning Mr. Knott and Riverdale Mills Corporation is long over; no demonstration of confidentiality has been made and there is no longer any reason to protect these documents. "To demonstrate that attorney-client privilege justifies withholding documents, agency must establish that information in documents was communicated to or by an attorney as part of professional relationship in order to provide agency with advice on legal ramifications of its actions; attorney-client privilege does not permit withholding of a document simply because they are product of attorney client relationship, and the agency must also show that information is confidential; in absence of showing that documents are based on information supplied to attorneys by agency with expectation of secrecy and not known by or disclosable to third parties, documents are not within exemption 5". Norwood v. Federal Aviation Admin. (1983, WD Tenn) 580 F. Supp. 994. as construed by 5 U.S.C.S. 552(b)(5).

2. Work Product (683 pages): There is no need to protect work product or other documents surrounding preparation for and participation in litigation when the litigation has been dismissed.
3. Deliberative Process (424 pages): The policy has been adopted and the documents are no longer protected. "Deliberative or advisory material intended to explain decision of policy already adopted is not within purview of 5 U.S.C.S. § 552(b)(5)." Tax Reform Research Group v. IRS (1976, DC Dist. Col) 419 F. Supp. 415, as construed by 5 U.S.C.S. 552(b)(5).
4. Work Product and Deliberative Process (1,898 pages): As noted before, the litigation is concluded and protection of those documents is no longer necessary.

Exemptions from disclosure are to be reviewed in light of the general purpose of disclosing federal agency activity. It is important to have the government's records available for public scrutiny, which is especially relevant in the case at hand where the EPA pursued a long and costly battle over criminal environmental charges that were ultimately found groundless and dismissed.

We have had over a year of correspondence with the EPA attempting to discover what documents the agency is still holding on to that were never brought forth in the trial that ultimately cleared Mr. Knott and Riverdale Mills Corporation. Please help us find closure to this issue and release all the documents regarding my client.

Sincerely,



Jamy Buchanan Madeja, Esq.

cc: James M. Knott, Sr.
Warren Miller, Esq.
Carl Dierker, Esq.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

May 24, 2006

Jamy Buchanan Madeja, Esq.
Buchanan & Associates
33 Mount Vernon Street
Boston, MA 02108

Re: Request No. 01-RIN-00229-05

Dear Ms. Madeja,

Enclosed please find copies of the documents you requested on your recent visit to our offices to review documents responsive to your Freedom of Information Request referenced above.

Also enclosed is a listing by category of documents responsive to your request which we have determined to be exempt from mandatory disclosure by virtue of 5 U.S.C. 552(b) 5, deliberative process, attorney work product, or attorney client privilege.

You may appeal this partial denial by submitting a written appeal to the Agency Freedom of Information Officer (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460, within 30 days of receipt of this partial denial. Your appeal should refer to the RIN number listed above, the date of this determination, and my name, title and address.

You will soon receive an itemized invoice covering the charges for processing your request to date. Because the charges already incurred are approaching the \$1000 limit you authorized us to spend, we will need an additional authorization from you before we can continue to process the remainder of your request. When we receive your authorization we will proceed with the remaining steps outlined in our letter of March 23, 2006 to you, which is attached.

Please call either Jill Metcalf at (617)918-1088 or Sharon Wells at (617)918-1007 if you have questions or would like to discuss this further.

Sincerely,

Pamela Dierker acting for
Carl Dierker

Regional Counsel
enclosures

**LIST OF DOCUMENTS WITHHELD IN
RESPONSE TO FOIA REQUEST 01-RIN-00229-05**

No.	Date(s)	Description of Document or Category of Document	Exemption Under 5 U.S.C. § 552(b)	Approximate Number of Pages
1	10/21/98, 4/14/99, 5/27/99, 6/1/99, 6/3/99, 9/22/99, 9/29/99, 9/30/99, 10/1/99, 10/14/99, 10/15/99, 10/26/99, 11/9/99, 11/19/99, 12/9/99, 3/23/00, 4/7/00, 4/18/00, 4/25/00, 8/8/00, 8/9/00, 8/10/00, 8/14/00, 8/17/00, 8/18/00, 8/23/00, 8/24/00, 8/25/00, 8/30/00, 8/31/00, 9/28/00, 9/29/00, 10/26/00, 10/30/00, 11/2/00, 11/8/00, 11/13/00, 11/14/00, 11/15/00, 11/17/00, 11/20/00, 11/27/00, 11/28/00, 1/3/01, 1/4/01, 1/5/01, 1/16/01, 1/17/01, 1/19/01, 2/12/01, 2/13/01, 2/21/01, 2/23/01, 3/12/01, 3/21/01, 3/22/01, 3/23/01, 4/18/01, 4/30/01, 5/1/01, 5/2/01, 5/4/01, 5/22/01, 5/30/01, undated	Attorney-Client Communications: documents in which EPA staff seek legal advice from the United States Department of Justice attorneys; documents in which United States Department of Justice attorneys provide legal advice to EPA staff; documents in which EPA staff seek legal advice from EPA attorneys; documents in which EPA attorneys provide legal advice to EPA staff; staff notes recording consultations with attorneys	Exemption 5 (attorney-client)	369 pp.

2	10/10/97, 7/9/98, 8/10/98, 4/30/99, 6/23/99, 6/24/99, 8/6/99, 8/17/99, 8/31/99, 9/20/99, 9/21/99, 9/24/99, 9/27/99, 9/28/99, 10/8/99, 10/15/99, 10/25/99, 10/27/99, 10/28/99, 11/1/99, 11/9/99, 11/18/99, 3/14/00, 4/6/00, 4/7/00, 4/18/00, 8/8/00, 8/11/00, 8/14/00, 8/15/00, 8/17/00, 8/18/00, 8/23/00, 8/30/00, 8/31/00, 9/15/00, 9/28/00, 10/3/00, 10/4/00, 10/20/00, 10/25/00, 10/26/00, 11/8/00, 11/20/00, 11/28/00, 11/29/00, 12/6/00, 12/8/00, 12/20/00, 12/22/00, 12/28/00, 1/5/01, 1/8/01, 1/9/01, 1/17/01, 1/31/01, 3/23/01, 4/26/01, 5/7/01, 5/8/01, 5/14/01, 5/17/01, 5/21/01, 5/22/01, 5/24/01, 5/29/01, 6/1/01, 6/4/01, 6/27/01, 7/5/01, undated	Attorney Work Product: correspondence between EPA attorneys prepared in anticipation of litigation; legal research conducted in anticipation of litigation; memoranda prepared in anticipation of litigation; attorney notes prepared in anticipation of litigation; memoranda and notes prepared by EPA staff at the direction of attorneys in anticipation of litigation	Exemption 5 (work product)	683 pp.
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3	<p>4/4/85, 5/7/85, 5/23/85, 7/15/85, 7/16/85, 11/19/85, 11/26/85, 7/18/95, 12/95, 6/7/96, 6/12/96, 9/30/97, 11/18/97, 1/2/98, 3/25/98, 9/10/98, 10/8/98, 1/7/99, 2/26/99, 5/30/99, 6/14/99, 6/15/99, 9/9/99, 9/14/99, 9/17/99, 9/20/99, 9/23/99, 9/30/99, 10/15/99, 10/18/99, 11/3/99, 11/9/99, 11/19/99, 12/6/99, 12/8/99, 12/11/99, 1/11/00, 1/13/00, 1/18/00, 2/10/00, 3/6/00, 4/11/00, 4/14/00, 5/11/00, 5/15/00, 6/13/00, 7/00, 7/17/00, 7/31/00, 8/00, 8/1/00, 8/2/00, 8/3/00, 8/9/00, 8/10/00, 8/11/00, 8/14/00, 8/15/00, 8/16/00, 8/17/00, 8/18/00, 8/21/00, 8/22/00, 8/24/00, 8/25/00, 9/6/00, 9/8/00, 9/11/00, 9/12/00, 9/15/00, 9/29/00, 10/5/00, 10/6/00, 10/13/00, 10/18/00, 10/23/00, 10/24/00, 10/25/00, 10/26/00, 11/13/00, 11/27/00, 12/1/00, 12/4/00, 12/5/00, 12/6/00, 12/7/00, 12/12/00, 12/14/00, 12/20/00, 12/22/00, 1/2/01, 1/12/01, 1/19/01, 2/14/01, 2/15/01, 3/21/01, 3/22/01, 3/23/01, 3/25/01, 3/26/01, 3/27/01, 3/28/01, 4/16/01, 4/26/01, 5/1/01, 5/2/01, 5/24/01, 5/29/01, 5/30/01, undated</p>	<p>Deliberative, Pre-Decisional Materials: notes reflecting preliminary staff thoughts; internal memoranda/documents briefing management; internal memoranda/documents raising issues to be decided; internal memoranda/documents conveying staff opinion; draft memoranda/documents; draft correspondence</p>	<p>Exemption 5 (deliberative process)</p>	<p>424 pp.</p>
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4	<p>5/17/99, 5/19/99, 6/2/99, 7/21/99, 7/26/99, 7/29/99, 8/99, 8/30/99, 9/99, 9/13/99, 9/22/99, 9/23/99, 9/24/99, 9/28/99, 9/30/99, 10/1/99, 10/7/99, 10/12/99, 10/20/99, 10/29/99, 11/1/99, 11/4/99, 11/5/99, 11/19/99, 12/6/99, 2/2/00, 2/16/00, 3/14/00, 3/23/00, 4/5/00, 4/10/00, 4/12/00, 5/11/00, 5/25/00, 5/26/00, 7/29/00, 7/31/00, 8/00, 8/1/00, 8/3/00, 8/4/00, 8/7/00, 8/8/00, 8/9/00, 8/10/00, 8/11/00, 8/14/00, 8/15/00, 8/17/00, 9/00, 9/5/00, 9/15/00, 9/19/00, 9/28/00, 9/29/00, 10/3/00, 10/4/00, 10/5/00, 10/6/00, 10/10/00, 10/11/00, 10/13/00, 10/17/00, 10/19/00, 10/20/00, 10/23/00, 10/24/00, 10/25/00, 10/26/00, 10/27/00, 11/00, 11/8/00, 11/16/00, 11/20/00, 11/27/00, 11/28/00, 11/29/00, 12/15/00, 12/18/00, 12/20/00, 1/5/01, 1/10/01, 1/11/01, 1/17/01, 1/31/01, 2/6/01, 2/12/01, 2/13/01, 2/14/01, 2/15/01, 2/21/01, 2/23/01, 3/22/01, 3/23/01, 3/26/01, 3/30/01, 4/2/01, 4/3/01, 5/1/01, 5/2/01, 5/14/01, 5/17/01, 5/24/01, 5/30/01, 8/6/01, 8/26/02, undated</p>	<p>Attorney Work Product and Deliberative, Pre-Decisional Materials: correspondence between EPA attorneys prepared in anticipation of litigation; memoranda/documents prepared in anticipation of litigation; internal memoranda/documents briefing management; internal memoranda/documents raising issues to be decided; internal memoranda/documents conveying staff opinion; draft memoranda/documents</p>	<p>Exemption 5 (work product and deliberative process)</p>	<p>1898 pp.</p>
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June 27, 2005

CERTIFIED MAIL #7004 1160 0006 4322 6310

National Freedom of Information Officer
U.S. EPA, Records, FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Riverdale Mills, James M. Knott, Sr.; Records request

Dear Sir or Madam:

This letter constitutes a demand pursuant to the Freedom of Information Act for copies of or access to all records in the possession or control of the United States Environmental Protection Agency referencing or concerning Riverdale Mills Corporation in Northbridge, Massachusetts, or James M. Knott, Sr., dated on or after January 1, 1997, through and including today's date. James M. Knott, Sr. currently resides in Northbridge, Massachusetts, and is also the president of Riverdale Mills Corporation.

To facilitate, but not limit, your response, please be advised of the following information. On September 8, 1998, I requested copies of all records referencing James M. Knott, Sr. and/or Riverdale Mills Corporation of Northbridge, Massachusetts (#01-RIN-00839-98). Both Washington and Boston U.S. EPA offices responded in part to the request. The completeness and accuracy of the EPA's response were already appealed in the fall of 1998.

With today's letter, I now seek copies of any records in the possession or control of the U.S. EPA which are responsive to my previous records request and which were previously withheld, as well as any additional records responsive to the broadened date references contained herein. If there is any doubt whatsoever as to whether a responsive record has previously been provided to me, please provide a copy or access thereto. Now that the United States has obtained a dismissal of all charges against James M. Knott, Sr. and Riverdale Mills Corporation, and no civil suits are pending, most if not all exemptions claimed are no longer applicable, if they ever were. And, perhaps, additional documents are now known to the U.S. EPA as responsive records requiring release.

Please note that today's FOIA letter expressly demands copies of or access to all public records in the possession or control of the U.S. EPA referencing Riverdale Mills

Corporation and/or James M. Knott, Sr., dated on or after January 1, 1997 through and including the present date.

Please provide all such records from any EPA office or contractor, including but not limited to Washington and Region 1 – Boston. As required by 5 U.S.C. § 552(b), if the EPA withholds any responsive records, please provide a description of the document and a statement as to the allegedly applicable exemption.

I trust this request will be handled as expeditiously as possible. If you have any questions, or if a discussion might facilitate handling of this matter, please do not hesitate to call my office at 617-227-8410 or to e-mail me at jmadeja@buchananassociates.com.

Thank you in advance for your anticipated cooperation.

Sincerely,

Jamy Buchanan Madeja, Esq.

cc: James M. Knott, Sr.
Warren Miller, Esq.